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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

LOREN OAKES,

Appellant,

v.

BENTON-FRANKLIN-WALLA WALLA
COUNTIES AIR POLLUTION CONTROL
AUTHORITY,

Respondent.

PCHB No. 90-66

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Loren C. Oakes filed an appeal with this Board, contesting the Benton-Franklin-Walla Walla Air Pollution Control Authority's "(Air Authority)" issuance of a Notice of Violation (No. 90-2) for \$250 for alleged dust problems.

A hearing was held on August 7, 1990 in Richland, Washington. Chair Judith Bendor presided for the Board. Appellant Loren Oakes represented himself. The Air Authority was represented by Attorney Robert Swisher. Court reporter Jeanne M. Voie, affiliated with Jackie Adkins & Associates (Yakima) took the proceedings. The record closed on September 4, 1990 with the final receipt of evidence. Board Member Harold S. Zimmerman has reviewed the record.

Sworn testimony was given; exhibits were introduced, argument was made. From this record, the Board issues these:

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB NO. 90-66

1 FINDINGS OF FACT

2 I

3 Loren Oakes and his family live at 1115 Catskill, in Richland
4 Washington, in a single family home.

5 In 1988-1989 he undertook a variety of measures to eliminate
6 weeds and bermuda grass in his lawn. This included applying
7 herbicides to the yard, and rototilling and removing all the ground
8 cover. In the process he left soil (including clay and sand) exposed
9 to the elements for almost two years.

10 II

11 Richland is an area which experiences vigorous winds.

12 Due to appellant's leaving his ground exposed, the winds carried
13 dust off his property and onto his neighbors' property. This led to
14 dirt problems on his neighbor's property, requiring more frequent
15 cleaning inside and outside the homes. The dust also exacerbated to
16 some degree one neighbor's ability to breathe.

17 Appellant did endeavor to lessen the dust problem by periodically
18 watering the exposed soil, but these efforts were only partially
19 effective.

20 III

21 The neighbors initially tried to solve the problem informally,
22 but to no avail. Finally, complaints were made to the Air Authority.
23 The Authority also tried to resolve the problem informally, with
24 little success.

1 IV

2 On March 9, 1990 the Air Officer for the Authority issued a
3 Notice of Violation Citation No 90-2, with a fine of \$250. The
4 citation had an error in its recitation of the complaining neighbors'
5 location, which the officer manually corrected on the file copy.

6 On March 16, 1990 yard work was done to prepare for sodding.

7 V

8 Any Conclusion of Law deemed to be a Finding of Fact is hereby
9 adopted as such. From these Findings of Fact, the Board makes these:

10 CONCLUSIONS OF LAW

11 I

12 The Pollution Control Hearings Board has jurisdiction over this
13 subject matter and these parties. Chaps. 70.94 and 43.21B RCW.

14 II

15 The Air Authority Regulation 80-7, at 400-040(2) prohibits any
16 person from causing or permitting emissions of particulate matter from
17 being deposited beyond their property in sufficient quantity to
18 unreasonably interfere with the use and enjoyment of the property upon
19 which the material is deposited.

20 We conclude that appellant Oakes violated this section.

21 III

22 We conclude the \$250 penalty is reasonable, given the duration of
23 the problem and the burden it caused the neighbors. Appellant chose
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1 to eradicate unwanted vegetation, causing his neighbors to have a dust
2 problem for almost two years. The fine is warranted.

3 IV


4 Any Finding of Fact deemed to be a Conclusion of Law is hereby
5 adopted as such. From these Conclusions of Law, the Board enters this:


6 ORDER

7 The Notice of Violation and Penalty No. 90-2 are AFFIRMED.

8 DONE this 15th day of October, 1990.

9 POLLUTION CONTROL HEARINGS BOARD

10 
11 JUDITH A. BENDOR, Chair

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13 HAROLD S. ZIMMERMAN, Member
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